

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
MARK McKINLEY,

Plaintiff,

-against-

SGT. CHRISTOPHER MOORE, et al.,

Defendants.
-----X

**STIPULATION OF
VOLUNTARY PARTIAL
DISMISSAL PURSUANT TO
FED. R. CIV. P. 41**

Civ. No. 21- 0678 (TJM/CFH)

WHEREAS, Plaintiff, Mark McKinley (“Plaintiff”), commenced this action, pursuant to 42 U.S.C § 1983, against Defendants, William Murray, John Thorpe, Jeffrey Phillips, Michael Sarrubbo, Claudio Robustiano, Christopher Moore, Carmen Matrese, and Nicole Elefonte (collectively “Defendants”), seeking to recover damages allegedly suffered during a use-of-force incident occurring on March 11, 2020, at Cocksackie Correctional Facility, Cocksackie, New York; and

WHEREAS, on August 5, 2021, Plaintiff filed a First Amended Complaint, which asserted claims against Defendants under the First, Eighth and Fourteenth Amendments to the U.S. Constitution (Dkt 10); and

WHEREAS, on September 2, 2021, pursuant to a stipulation between the parties, the Court dismissed the claims under the Fourteenth Amendment against Defendants with prejudice (Dkt. 16); and

WHEREAS, on August 10, 2022, pursuant to a stipulation between the parties, the Court dismissed all claims against Defendant Nicole Elefonte with prejudice (Dkt. 33); and

WHEREAS, on October 12, 2022, Defendants filed a motion for summary judgment seeking the dismissal of Plaintiff's claims under the First Amendment against Defendants Jeffrey Phillips, John Thorpe, Claudio Robustiano, Michael Sarrubbo, William Murray and Carmen Matrese (the "Moving Defendants"; and

WHEREAS, the motion for summary judgment seeks no relief as to Defendant Christopher Moore; and

WHEREAS, the parties agree to resolve the pending motion for summary judgment by dismissing, with prejudice, all claims asserted under the First Amendment against the Moving Defendants; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties and/or respective counsel, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, that Plaintiff's claims under the First Amendment against Defendants Jeffrey Phillips, John Thorpe, Claudio Robustiano, Michael Sarrubbo, William Murray and Carmen Matrese are dismissed with prejudice, and without costs or attorney's fees to any party.

IT IS FURTHER STIPULATED AND AGREED that the following claims remain in this action and are unaffected by the foregoing stipulation: (1) First Amendment claim against Defendant Christopher Moore; and (2) Eighth Amendment claim against Defendants Christopher Moore, Jeffrey Phillips, John Thorpe, Claudio Robustiano, Michael Sarrubbo, William Murray and Carmen Matrese.

IT IS FURTHER STIPULATED AND AGREED that Defendants' motion for summary judgment is hereby withdrawn.

Dated: Albany, New York
November 1, 2022

LETITIA JAMES
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State of New York
Attorney for Defendants
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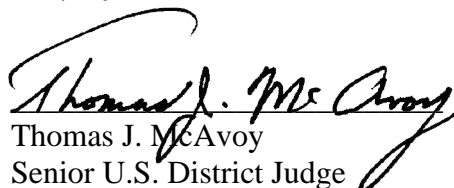
s/Jorge A. Rodriguez
By: _____
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Dated: New York, New York
November __, 2022

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SO ORDERED
11/7/2022


Thomas J. McAvoy
Senior U.S. District Judge